

**APR 12 2006**

## UNITED STATES COURT OF APPEALS

## FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANK DANIEL HANKINS,

Defendant-Appellant.

No. 04-30296

DC No. CR-02-00041-3-DWM  
District of Montana (Missoula)

ORDER

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

The memdispo filed December 12, 2005, is amended as follows: beginning on page two, line 18, delete the clause “the district court judge’s statements at sentencing make it clear that any *Booker* error was harmless” and the citation to *United States v. Garcia-Guizar*; and replace them with “the district court judge provided an alternative sentence correctly anticipating *Booker*’s holding and exercising his discretion, thereby curing any constitutional *Booker* error. *See United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006).”

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no

judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

With this amendment, the petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed appeal.